

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105**

**AUTHORIZATION TO DISCHARGE UNDER THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**NPDES PERMIT NO. NN0028193**

In compliance with the provisions of the Clean Water Act ("CWA") (Public Law 92-500, as amended, 33 U.S.C. 1251 et seq.), the following discharger is authorized to discharge from the identified facility at the outfall location(s) specified below, in accordance with the effluent limits, monitoring requirements, and other conditions set forth in this permit:

Discharger Name	Owner: Navajo Transitional Energy Company Operator/Permittee: Bisti Fuels LLC
Discharger Address	P.O. Box 1717 Fruitland, New Mexico 87416-1717
Facility Name	Navajo Coal Mine
Facility Location Address	16 miles Southwest of Fruitland Fruitland, NM 87416
Facility Rating	Minor

Outfall Number	General Type of Waste Discharged	Outfall Latitude	Outfall Longitude	Receiving Water
37 Outfalls listed in Appendix A -C	Alkaline Mine Drainage, Coal Preparation Areas, Western Alkaline Reclamation,	37 Outfalls listed in Appendix A -C	37 Outfalls listed in Appendix A -C	Chaco River

This permit was issued on:	03/05/2018
This permit shall become effective on:	05/01/2018
This permit shall expire at midnight on:	04/30/2023
In accordance with 40 CFR 122.21(d), the discharger shall submit a new application for a permit at least 180 days before the expiration date of this permit, unless permission for a date no later than the permit expiration date has been granted by the Director.	

Signed this March 5, 2018, for the Regional Administrator.

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Tomás Torres, Director  
Water Division

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## SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

### 1. Alkaline Mine Drainage Outfalls

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge mine drainage from the Outfall Numbers listed in Appendix A – “Alkaline Mine Drainage” to the receiving waters listed in Appendix A – “Alkaline Mine Drainage”. Such discharges shall be limited and monitored by the permittee as specified below. Samples shall be collected prior to mixing with other waste source stream and/or discharge to surface waters.

Table A-1: Alkaline Mine Drainage Effluent Limitations and Monitoring Requirements

Effluent Parameter	Units	Monthly Average	Maximum for any 1 day	Monitoring Frequency <sup>(1)</sup>	Sampling Type
Flow	MGD	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Calculated <sup>(2)</sup>
Total Suspended Solids (TSS)	mg/L	35	70	1/day <sup>(1)</sup>	Discrete
Iron, total (Existing Outfalls)	mg/L	3.5	7.0	1/day <sup>(1)</sup>	Discrete
Iron, total (New Outfalls)	mg/L	3.0	6.0	1/day <sup>(1)</sup>	Discrete
Manganese, total	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
pH	Std.units	between 6.0 to 9.0		1/day <sup>(1)</sup>	Discrete
Arsenic, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Arsenic, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Boron, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Boron, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Cadmium, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Cadmium, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Lead, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete

Lead, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Mercury, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Mercury, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Selenium, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Selenium, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Sulfate	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Total Dissolved Solids (TDS)	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete

NOTES:

- (1) Samples shall be taken once during each occurrence or once every 24 hours if the duration of the occurrence is greater than 24 hours.
- (2) To determine total flow in gallons for each discharge and duration of discharge.
- (3) Monitoring only.

2. Coal Preparation Plants, Storage Areas, and Ancillary Area Runoff Outfalls

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge runoff from the Outfall Numbers listed in Appendix B – “Coal Preparation & Associated Areas” to the receiving waters listed in Appendix B – “Coal Preparation & Associated Areas”. Such discharges shall be limited and monitored by the permittee as specified below. Samples shall be collected prior to mixing with other waste source stream and/or discharge to surface waters.

Table A-2: Coal Preparation Areas Effluent Limitations and Monitoring Requirements

<b>Effluent Parameter</b>	<b>Units</b>	<b>Monthly Average</b>	<b>Maximum for any 1 day</b>	<b>Monitoring Frequency <sup>(1)</sup></b>	<b>Sampling Type</b>
Flow	MGD	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Calculated <sup>(2)</sup>
Total Suspended Solids (TSS)	mg/L	35	70	1/day <sup>(1)</sup>	Discrete
Iron, total (Existing Outfalls)	mg/L	3.5	7.0	1/day <sup>(1)</sup>	Discrete

Iron, total (New Outfalls)	mg/L	3.0	6.0	1/day <sup>(1)</sup>	Discrete
Manganese, Total	mg/L	2.0	4.0	1/day <sup>(1)</sup>	Discrete
pH	Std.units	between 6.0 to 9.0		1/day <sup>(1)</sup>	Discrete
Arsenic, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Arsenic, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Boron, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Boron, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Cadmium, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Cadmium, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Lead, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Lead, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Mercury, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Mercury, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Selenium, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Selenium, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Sulfate	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Total Dissolved Solids (TDS)	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete

NOTES:

- (1) Samples shall be taken once during each occurrence or once every 24 hours if the duration of the occurrence is greater than 24 hours.
- (2) To determine total flow in gallons for each discharge and duration of discharge.
- (3) Monitoring only.

**3. Western Alkaline reclamation, brushing and grubbing, topsoil stockpiling, and regraded area Outfalls.**

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge runoff from the Outfall Numbers listed in Appendix C – “Western Alkaline Reclamation Areas” to the receiving waters listed in Appendix C – “Western Alkaline Reclamation Areas”.

Such discharges shall be limited and monitored by the permittee as specified below. The permittee must:

- a) submit a site-specific Sediment Control Plan for EPA approval demonstrating that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions. The Sediment Control Plan shall, at a minimum, identify Best Management Practices (BMPs), including design specifications, construction specifications, maintenance schedules, criteria for inspection, and expected performance and longevity of the BMPs.
- b) demonstrate using watershed models that the implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions. The watershed model must be the same model that is being used to acquire the permittee’s SMCRA permit.
- c) design, implement, and maintain the BMPs in the manner specified in the approved Sediment Control Plan throughout the term of this permit.
- d) revise the Sediment Control Plan to incorporate new areas. As existing outfalls defined in this permit as “alkaline mine drainage” are reclaimed, the approved Sediment Control Plan shall be updated to incorporate the newly reclaimed outfalls into this subpart. A revised Sediment Control Plan and revised watershed model must be submitted to EPA and approved by EPA before it becomes effective. Revisions to the Sediment Control Plan must meet all requirements contained at 40 CFR Part 434.82, and 100% of the drainage area to an outfall that has been disturbed by mining must meet the definition of “western alkaline reclamation, brushing and grubbing, topsoil stockpiling, and regraded areas” (as defined at 40 CFR 434.80) to be considered for coverage. EPA’s approval of an updated Sediment Control Plan and reclassification of an existing outfall from “alkaline mine drainage” to a reclaimed area will be considered a minor modification to the permit as described in Section C of this permit.

#### 4. Discharges resulting from precipitation events

a) The permittee is authorized to discharge runoff from Outfall Numbers listed in Appendix A – “Alkaline Mine Drainage” and Appendix B – “Coal Preparation & Associated Areas” resulting from precipitation events greater than or equal to a 10-year, 24-hour precipitation event (1.80 inches within a 24 hour period)

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge runoff from all Outfalls resulting from precipitation events greater than or equal to a 10-year, 24-hour precipitation event (1.80 inches within a 24 hour period).

Such discharges shall be limited and monitored by the permittee as specified below. Samples shall be collected prior to mixing with other waste source stream and/or discharge to surface waters.

Table A-4-a: Discharges from precipitation events less than 10-year, 24-hour event.

Effluent Parameter	Units	Monthly Average	Maximum for any 1 day	Monitoring Frequency <sup>(1)</sup>	Sampling Type
Flow	MGD	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Calculated <sup>(2)</sup>
Settleable Solids	mL/L	--	0.5	1/day <sup>(1)</sup>	Discrete
Iron, total	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Manganese, total	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
pH	Std.units	between 6.0 to 9.0		1/day <sup>(1)</sup>	Discrete
Arsenic, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Arsenic, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Boron, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Boron, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Cadmium, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete

Cadmium, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Lead, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Lead, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Mercury, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Mercury, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Selenium, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Selenium, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Sulfate	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Total Dissolved Solids (TDS)	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete

NOTES:

- (1) Samples shall be taken once during each occurrence or once every 24 hours if the duration of the occurrence is greater than 24 hours.
- (2) To determine total flow in gallons for each discharge and duration of discharge.
- (3) Monitoring only.

b) Discharges resulting from precipitation events greater than a 10-year, 24-hour precipitation event (1.56 inches within a 24 hour period), which is comparable to the National Oceanic and Atmospheric Agency's ("NOAA") frequency estimates at the Fruitland 3E station for a 10-year, 24-hour storm event and used in the design of ponds and spillways at Navajo Mine and Pinabete Mine areas.

During the period beginning on the effective date of this permit and lasting through the date of expiration, the permittee is authorized to discharge runoff from all Outfalls resulting from precipitation events greater than a 10-year, 24-hour precipitation event (1.56 inches within a 24 hour period).

Such discharges shall be limited and monitored by the permittee as specified below. Samples shall be collected prior to mixing with other waste source stream and/or discharge to surface waters.



Table A-4-b: Discharges from precipitation events greater than 10-year, 24-hour event.

<b>Effluent Parameter</b>	<b>Units</b>	<b>Monthly Average</b>	<b>Maximum for any 1 day</b>	<b>Monitoring Frequency <sup>(1)</sup></b>	<b>Sampling Type</b>
Flow	MGD	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Calculated <sup>(2)</sup>
Settleable Solids	mL/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Iron, total	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Manganese, total	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
pH	Std.units	between 6.0 to 9.0		1/day <sup>(1)</sup>	Discrete
Arsenic, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Arsenic, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Boron, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Boron, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Cadmium, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Cadmium, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Lead, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Lead, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Mercury, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Mercury, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Selenium, total	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Selenium, dissolved	ug/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Sulfate	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete
Total Dissolved Solids (TDS)	mg/L	Monitor <sup>(3)</sup>	Monitor <sup>(3)</sup>	1/day <sup>(1)</sup>	Discrete

NOTES:

- (1) Samples shall be taken once during each occurrence or once every 24 hours if the duration of the occurrence is greater than 24 hours.
- (2) To determine total flow in gallons for each discharge and duration of discharge.
- (3) Monitoring only.

**SECTION B. GENERAL DISCHARGE SPECIFICATIONS**

1. All Waters of the Navajo Nation shall be free from pollutants in amounts or combinations that, for any duration:
  - a. Cause injury to, are toxic to, or otherwise adversely affect human health, public safety, or public welfare.
  - b. Cause injury to, are toxic to, or otherwise adversely affect the habitation, growth, or propagation of indigenous aquatic plant and animal communities or any member of these communities; of any desirable non-indigenous member of these communities; of waterfowl accessing the water body; or otherwise adversely affect the physical, chemical, or biological conditions on which these communities and their members depend.
  - c. Settle to form bottom deposits, including sediments, precipitates and organic materials, that cause injury to, are toxic to, or otherwise adversely affect the habitation, growth or propagation of indigenous aquatic plant and animal communities or any member of these communities; of any desirable non-indigenous member of these communities; of waterfowl accessing the water body; or otherwise adversely affect the physical, chemical, or biological conditions on which these communities and their members depend.
  - d. Cause physical, chemical, or biological conditions that promote the habitation, growth, or propagation of undesirable, non-indigenous species of plant or animal life in the water body.
  - e. Cause solids, oil, grease, foam, scum, or any other form of objectionable floating debris on the surface of the water body; may cause a film iridescent appearance on the surface of the water body; or that may cause a deposit on a shoreline, on a bank, or on aquatic vegetation.
  - f. Cause objectionable odor in the area of the water body.
  - g. Cause objectionable taste, odor, color, or turbidity in the water body.
  - h. Cause objectionable taste in edible plant and animal life, including waterfowl, that reside in, on, or adjacent to the water body.

## **SECTION C. BEST MANAGEMENT PRACTICES**

The permittee shall review and update their Storm Water Pollution Prevention Plan (SWPPP). The permittee shall develop enhanced good housekeeping provisions to their SWPPP to address onsite storm water management from coal and coal combustion byproducts and the protection of surface waters. The SWPPP shall, at a minimum, incorporate the following provisions:

*Residue Hauling Vehicles.* Inspect all coal or coal residue hauling vehicles for proper covering over the load adequate gate sealing and overall integrity of the container body. Repair as soon as practicable, vehicles without load covering or adequate gate sealing, or with leaking containers or beds. If covering is not used, ensure that haul vehicles are not overfilled with coal and that operators are trained to watch for and report coal spillage on the haul road. Additionally, ensure drainages from the roads are directed towards BMPs and sediment ponds to stop any coal or coal residue from entering the waterways.

The permittee shall submit revised SWPPP to the permitting authority within three months of permit issuance for EPA review.

## **SECTION D. PERMIT REOPENER**

Should any of the monitoring indicate that the discharge causes, has the reasonable potential to cause, or contributes to excursions above water quality criteria, the permit may be reopened for the imposition of water quality based limits and/or whole effluent toxicity limits. Also, this permit may be modified, in accordance with the requirements set forth at 40 CFR Parts 122.44 and 124.14, to include appropriate conditions or limits to address demonstrated effluent toxicity based on newly available information, or to implement any EPA-approved new Tribal water quality standards.

This permit authorizes the discharge of wastewater from over 37 outfalls in 3 distinct subcategories. Throughout the permit term, as mine operations continue in a linear fashion, new outfall locations may become necessary to treat runoff and other outfalls may need to be authorized under a different subcategory. Therefore, EPA may modify the list of Outfalls in the Appendixes during the permit term to add, terminate or reclassify a outfall that occurs during the anticipated course of the existing mining activities. This will be accomplished thru a minor modification of the permit in accordance with 40 CFR Part 122.63. The permit may be reopened to authorize new outfalls for an area not currently being mined through a major modification to the existing permit 40 CFR Part 122.63.

## **SECTION E. MONITORING AND REPORTING**

### **1. Reporting of Monitoring Results**

a. Monitoring results obtained during the previous year shall be summarized for each month and submitted on forms to be supplied by the EPA Regional Administrator, to the extent that the information reported may be entered on the forms. The results of all monitoring required by this permit shall be submitted in such a format as to allow direct comparison with the limitations and requirements of the permit. Unless otherwise specified, discharge flow shall be reported in terms of the average flow over that 30 day period. These reports are due January 28 of each year. Duplicate signed copies of these, and all other reports required herein, shall be submitted to the Regional Administrator at the following addresses:

NPDES Compliance Office  
Environmental Protection Agency (WTR-1)  
75 Hawthorne Street  
San Francisco, CA 94105  
Telephone: (415) 972-3519

Navajo Nation Environmental Protection Agency  
Navajo Nation EPA  
P.O. Box 339  
Window Rock, AZ 86515  
Telephone: (928) 871-7185

b. For effluent analyses, the permittee shall utilize an EPA-approved analytical method with a Method Detection Limit (MDL) that is lower than the effluent limitations (or lower than applicable water quality criteria if monitoring is required but no effluent limitations have been established.) MDL is the minimum concentration of an analyte that can be detected with 99% confidence that the analyte concentration is greater than zero, as defined by the specific laboratory method listed in 40 CFR Part 136. The procedure for determination of a laboratory MDL is in 40 CFR Part 136, Appendix B.

c. If all published MDLs are higher than the effluent limitations (or applicable criteria concentrations), the permittee shall utilize the EPA-approved analytical method with the lowest published MDL.

d. The permittee shall develop a Quality Assurance (QA) Manual/QA Plan. The purpose of the QA Manual is to assist in planning for the collection and analysis of samples and explaining data anomalies if they occur. As appropriate and applicable, the QA Manual shall include the details enumerated below. The QA Manual shall be retained on the permittee's premises and be available for review by USEPA or Navajo Nation EPA upon request. The permittee shall review its QA Manual annually and revise it when appropriate. Throughout all field sampling and laboratory analyses, the permittee shall use quality assurance/quality control (QA/QC) procedures as documented in their QA Manual.

- i. Project Management including roles and responsibilities of the participants; purpose of sample collection; matrix to be sampled; the analytes or compounds being measured; applicable technical, regulatory, or program-specific action criteria; personnel qualification requirements for collecting samples.
- ii. Sample collection procedures; equipment used; the type and number of samples to be collected including QA/QC samples (i.e., background samples, duplicatives, and equipment or field blanks); preservatives and holding times for the samples (see 40 CFR Part 136.3).
- iii. Identification of the laboratory to be used to analyze the samples; provisions for any proficiency demonstration that will be required by the laboratory before or after contract award such as passing a performance evaluation sample; analytical method to be used; required QC results to be reported (e.g., matrix spike recoveries, duplicate relative percent differences, blank contamination, laboratory control sample recoveries, surrogate spike recoveries, etc.) and acceptance criteria; and corrective actions to be taken by the permittee or the laboratory as a result of problems identified during QC checks.
- iv. Discussion of how the permittee will perform data review and requirements for reporting of results to USEPA or Navajo Nation EPA to include resolving of data quality issues and identifying limitations on the use of the data.

e. Sample collection shall be performed as stated in the QA Manual. The QA

Manual shall include a discussion on the preservation and handling, preparation and analysis of samples as described in the most recent edition of 40 CFR Part 136.3, unless otherwise specified in this permit.

## **2. Monitoring and Records**

Records of monitoring information shall include:

- a. Date, exact location, and time of sampling or measurements performed, preservatives used;
- b. Individual(s) who performed the sampling or measurements;
- c. Date(s) analyses were performed;
- d. Laboratory(ies) which performed the analyses;
- e. Analytical techniques or methods used;
- f. Any comments, case narrative or summary of results produced by the laboratory. These should identify and discuss QA/QC analyses performed concurrently during sample analyses and should specify whether they met project and 40 CFR Part 136 requirements. The summary of results must include information on initial and continuing calibration, surrogate analyses, blanks, duplicates, laboratory control samples, matrix spike and matrix spike duplicate results, sample receipt condition, holding times, and preservation.
- g. Summary of data interpretation and any corrective action taken by the permittee.
- h. Effluent limitations for analytes/compounds being analyzed.

## **3. Twenty Four-Hour Reporting of Noncompliance**

The permittee shall report any non-compliance which may endanger human health or the environment. This information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances to the following persons or their offices:

CWA Compliance Office Manager  
U.S. EPA Region 9  
(415) 972-3577

Navajo Nation EPA  
Attn: Patrick Antonio  
(928) 871-7185

If the permittee is unsuccessful in contacting the persons above, the permittee shall report by 9 a.m. on the first business day following the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance

and its cause; the period of noncompliance, including dates and times, and, if the noncompliance has not been corrected, the time it is expected to continue; and steps or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

## **SECTION F. INSPECTION AND ENTRY**

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and such other documents as may be required by law, to perform inspections under authority of Section 10: Inspection and Entry of the EPA Region 9 “Standard Federal NPDES Permit Conditions”, dated July 27, 2011, as attached in Attachment A.

## **SECTION G. DEFINITIONS**

The following definitions shall apply unless otherwise specified in the permit:

1. Discrete sample means any individual sample collected in less than 15 minutes.
2. Daily discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharges over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day. Daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that sampling day.
3. Daily average discharge limitation means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
4. Daily maximum concentration means the measurement made on any single discrete sample of composite sample.
5. Daily maximum mass limit means the highest allowable daily discharge by mass during

any calendar day.

6. A composite sample means, for flow rate measurements, the arithmetic mean of no fewer than 4 individual measurements taken at equal intervals for one hour or for the duration of discharge, whichever is shorter. A composite sample means, for other than flow rate measurements, a combination of 4 individual portions obtained at equal time intervals for 4 hours or for the duration of the discharge, whichever is shorter. The volume of each individual portion shall be directly proportional to the discharge flow rate at the time of sampling. The sampling period shall coincide with the period of maximum discharge flow.
7. A monthly or weekly average concentration limitation means the arithmetic mean of consecutive measurements made during a calendar month or weekly period, respectively.
8. A monthly or weekly average mass limitation means the total discharge by mass during a calendar monthly or weekly period, respectively, divided by the number of days in the period that the facility was discharging. Where less than daily sampling is required by this permit, the monthly or weekly average value shall be determined by the summation of all the measured discharges by mass divided by the number of days during the monthly or weekly period when the measurements were made.



### APPENDIX A – “Alkaline Mine Drainage”

Serial Number/ Deg.Min.Sec.	Latitude Deg.Min.Sec.	Longitude Deg.Min.Sec.	Receiving Water
Existing Outfalls			
006	36-37-34	108-29-58	Chaco River
007	36-37-31	108-30-14	Chaco River
008	36-37-02	108-30-31	Chaco River
011	36-35-59	108-31-37	Chaco River
013	36-33-02	108-31-44	Chaco River
019	36-31-07	108-31-21	Chaco River
New Outfalls			
020	36-30-45	108-29-49	Chaco River
021	36-30-46	108-29-37	Chaco River
022	36-31-03	108-29-05	Chaco River
023	36-31-07	108-30-44	Chaco River
4-1	36-31-04	108-31-11	Chaco River
4-2	36-30-53	108-31-31	Chaco River
4-3	36-30-45	108-30-20	Chaco River
4-4	36-30-42	108-30-26	Chaco River
4-5	36-30-45	108-31-52	Chaco River
4-6	36-30-36	108-32-18	Chaco River
4-7	36-30-33	108-32-24	Chaco River
4-8	36-30-29	108-32-37	Chaco River
4-9	36-30-26	108-30-05	Chaco River
4-10	36-30-18	108-29-58	Chaco River
4-11	36-30-09	108-29-52	Chaco River
4-12	36-30-12	108-29-45	Chaco River
4-13	36-29-42	108-29-16	Chaco River
4-15	36-29-45	108-32-28	Chaco River
4-19	36-29-20	108-31-41	Chaco River
4-17	36-29-04	108-31-22	Chaco River
4-18	36-28-56	108-30-55	Chaco River
4-19	36-28-38	108-30-42	Chaco River
4-20	36-28-29	108-30-44	Chaco River
4-21	36-28-08	108-30-31	Chaco River
4-22	36-27-54	108-30-19	Chaco River

**APPENDIX B – “Coal Preparation & Associated Areas”**

<u>Outfall Number</u>	<u>Latitude Deg.Min.Sec.</u>	<u>Longitude Deg.Min.Sec.</u>	<u>Receiving Water</u>
New Outfall 4-14	36-29-28	108-29-04	Chaco River

**APPENDIX C – “Western Alkaline Reclamation Areas”**

<u>Outfall Number</u>	<u>Latitude Deg.Min.Sec.</u>	<u>Longitude Deg.Min.Sec.</u>	<u>Receiving Water</u>
Existing Outfalls			
004	36-38-15	108-28-44	Chaco River
009	36-36-59	108-30-58	Chaco River
010	36-36-53	108-31-20	Chaco River
017	36-31-10	108-32-02	Chaco River
018	36-31-31	108-32-07	Chaco River

**ATTACHMENT A: Standard Permit Conditions**



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

### REGION IX

#### CWA STANDARDS AND PERMITS OFFICE (WTR 2-3)

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### STANDARD FEDERAL NPDES PERMIT CONDITIONS

Updated as of March 28, 2016  
Reference: 40 CFR 122.41 (80 FR 64097, October 22, 2015)

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#### A. *All NPDES Permits*

In accordance with 40 CFR 122.41, the following conditions apply to all NPDES permits and are expressly incorporated into this permit.

a. Duty to comply; at 40 CFR 122.41(a).

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

- (1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under 405(d) of the CWA within the time provided in the regulations that established these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- (2) The CWA provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The CWA provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions

or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, such as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- (3) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

- b. Duty to reapply; at 40 CFR 122.41(b).

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

- c. Need to halt or reduce activity not a defense; at 40 CFR 122.41(c).

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

- d. Duty to mitigate; at 40 CFR 122.41(d).

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

- e. Proper operation and maintenance; at 40 CFR 122.41(e).

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

- f. Permit actions; at 40 CFR 122.41(f).

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

- g. Property rights; at 40 CFR 122.41(g).

This permit does not convey any property rights of any sort, or any exclusive privilege.

- h. Duty to provide information; at 40 CFR 122.41(h).

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

- i. Inspection and entry; at 40 CFR 122.41(i).

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

- j. Monitoring and records; at 40 CFR 122.41(j).

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

- (i) The date, exact place, and time of sampling or measurements;
- (ii) The individual(s) who performed the sampling or measurements;
- (iii) The date(s) analyses were performed
- (iv) The individuals(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

(4) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

(5) The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

k. Signatory requirement; at 40 CFR 122.41(k).

(1) All applications, reports, or information submitted to the Director shall be signed and certified. (See 40 CFR 122.22.)

(2) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

l. Reporting requirements; at 40 CFR 122.41(l).

(1) Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alternations or additions to the permitted facility. Notice is required only when:

- (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or
- (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1).

- (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
- (2) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (3) Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the CWA. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory.)
- (4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
  - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law..
  - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 503, or as specified in the permit, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
  - (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- (5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (6) Twenty-four hour reporting.
  - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times), and if the



noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (*e.g.*, manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See 40 CFR 122.41(g).)

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See 40 CFR 122.44(g).)

(iii) The Director may waive the written report on a case-by-case basis for reports under 40 CFR 122.41(l)(6)(ii) of this section if the oral report has been received within 24 hours.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6). For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph (l)(6) and the applicable required data in appendix A to 40 CFR part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to

electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

- (8) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
- (9) Identification of the initial recipient for NPDES electronic reporting data. The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in appendix A to 40 CFR 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 CFR 127.2(b) of this chapter. EPA will identify and publish the list of initial recipients on its Web site and in the Federal Register, by state and by NPDES data group [see § 127.2(c) of this chapter]. EPA will update and maintain this listing.

m. Bypass; at 40 CFR 122.41(m).

(1) Definitions.

- (i) “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 40 CFR 122.41(m)(3) and (m)(4) of this section.

(3) Notice.

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. As of December 21, 2020 all notices submitted in compliance with this section must be submitted electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3(including, in all cases, subpart D to part 3), § 122.22, and 40 CFR part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.
- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this section must be submitted

electronically by the permittee to the Director or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR part 3 (including, in all cases, subpart D to part 3), 40 CFR 122.22, and 40 CFR 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

(4) Prohibition of bypass.

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

n. Upset; at 40 CFR 122.41(n).

(1) Definition. “Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

(2) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

- (iii) The permittee submitted notice of the upset as required in paragraph (l)(6)(ii)(B) of this section (24 hour notice).
  - (iv) The permittee complied with any remedial measures required under paragraph (d) of this section.
- (4) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

**B. *Specific Categories of NPDES Permits***

In accordance with 40 CFR 122.42, the following conditions, in addition to those set forth at 40 CFR 122.41, apply to all NPDES permits within the category specified below and are expressly incorporated into this permit.

- a. Existing manufacturing, commercial, mining, and silvicultural dischargers; at 40 CFR 122.42 (a).

All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

- (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
    - (i) One hundred micrograms per liter (100 µg/l);
    - (ii) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
    - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
    - (iv) The level established by the Director in accordance with 40 CFR 122.44(f).
  - (2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
    - (i) Five hundred micrograms per liter (500 µg/l);
    - (ii) One milligram per liter (1 mg/l) for antimony;
    - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7).
    - (iv) The level established by the Director in accordance with 40 CFR 122.44(f).
- b. Publicly owned treatment works; at 40 CFR 122.42(b).

All POTWs must provide adequate notice to the Director of the following:

- (1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 and 306 of the CWA if it were directly discharging those pollutants; and
- (2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- (3) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

The following condition has been established by EPA Region 9 to enforce applicable requirements of the Resource Conservation and Recovery Act:

- (1) Publicly owned treatment works may not receive hazardous waste by truck, rail, or dedicated pipe except as provided under 40 CFR 270. Hazardous wastes are defined at 40 CFR 261 and include any mixture containing any waste listed under 40 CFR 261.31 through 261.33. The Domestic Sewage Exclusion (40 CFR 261.4) applies only to wastes mixed with domestic sewage in a sewer leading to a publicly owned treatment works and not to mixtures of hazardous wastes and sewage or septage delivered to the treatment plant by truck.

c. Municipal Separate Storm Sewer Systems; at 40 CFR 122.42(c).

The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

- (1) The status of implementing the components of the storm water management program that are established as permit conditions;
- (2) Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with 40 CFR 122.26(d)(2)(iii); and
- (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 40 CFR 122.26(d)(2)(iv) and (d)(2)(v);
- (4) A summary of the data, including monitoring data, that is accumulated throughout the reporting year;
- (5) Annual expenditures and budget for year following each annual report;
- (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;
- (7) Identification of water quality improvements or degradation.

d. Storm Water Discharges; at 40 CFR 122.42(d).

The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the issuance of the permit.

e. Privately Owned Treatment Works; at 40 CFR 122.44(m).

For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

The following conditions are established to enforce applicable requirements of the Resource Conservation and Recovery Act and 40 CFR 122.44(m). Privately owned treatment works are defined at 40 CFR 122.2. "Privately owned treatment works" means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a POTW, as defined at 40 CFR 403.3.

- (1) Materials authorized to be disposed of into the privately owned treatment works and collection system are typical of domestic sewage. Unauthorized materials are hazardous waste (as defined at 40 CFR 261), motor oil, gasoline, paints, varnishes, solvents, pesticides, fertilizers, industrial wastes, or other materials not generally associated with toilet flushing or personal hygiene, laundry, or food preparation, unless specifically listed under "Authorized Non-domestic Sewer Dischargers" elsewhere in this permit.
- (2) It is the permittee's responsibility to inform users of the privately owned treatment works and collection system of the prohibition against unauthorized materials and to ensure compliance with the prohibition. The permittee must have the authority and capacity to sample all discharges to the collection system, including any from septic haulers or other unsewered dischargers, and shall take and analyze such samples for conventional, toxic, or hazardous pollutants when instructed by the permitting authority or by an EPA, State, or Tribal inspector. The permittee must provide adequate security to prevent unauthorized discharges to the collection system.
- (3) Should a user of the privately owned treatment works desire authorization to discharge non-domestic wastes, the permittee shall submit a request for permit modification and an application, pursuant to 40 CFR 122.44(m), describing the proposed discharge. The application shall, to the extent possible, be submitted using EPA Forms 1 and 2C, unless another format is requested by the permitting authority. If the privately owned treatment works or collection system user is different from the permittee, and the permittee agrees to allow the non-domestic discharge, the user shall submit the application and the permittee shall submit the permit modification upon request. The application and request for modification shall be submitted at least six months before authorization to discharge non-domestic wastes to the privately owned treatment works or collection system is desired.

**C. *Standard Conditions Established by EPA Region 9 for All NPDES Permits***

1. Duty to reapply; at 40 CFR 122.21(d).
  - a. Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)
  - b. All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:
    - (1) the Regional Administrator may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.
2. Signatories to permit applications and reports; at 40 CFR 122.22.
  - a. Applications. All permit applications shall be signed as follows:
    - (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in 40 CFR 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under 40 CFR 122.22(a)(1)(ii) rather than to specific individuals.

    - (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
    - (3) For a municipality, State, Federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).
  - b. All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in paragraph (a) of this section;
  - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters of the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,
  - (3) The written authorization is submitted to the Director.
- c. Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
  - d. Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
3. Reopener Clause; at 40 CFR 122.44(c).

For any permit issued to a treatment works treating domestic sewage (including “sludge-only facilities”), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.
  4. Transfer of permits; at 40 CFR 122.61.
    - a. Transfers by modification. Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under 40 CFR 122.62(b)(2)), or a minor modification made (under 40 CFR 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.
    - b. Automatic transfers. As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:
      - (1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;



- (2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- (3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under 40 CFR 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

5. Minor modifications of permits; at 40 CFR 122.63.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 40 CFR 124. Any permit modification not processed as a minor modification under this section must be made for cause and with 40 CFR 124 draft permit and public notice as required in 40 CFR 122.62. Minor modifications may only:

- a. Correct typographical errors;
- b. Require more frequent monitoring or reporting by the permittee;
- c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
- d. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.
- e. (1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 CFR 122.29.  
  
(2) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
- f. [Reserved]
- g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR 403.18) as enforceable conditions of the POTW's permits.

6. Termination of permits; at 40 CFR 122.64.

- a. The following are causes for terminating a permit during its term, or for denying a permit renewal application:
  - (1) Noncompliance by the permittee with any conditions of the permit;

- (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
    - (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
    - (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).
  - b. The Director shall follow the applicable procedures in 40 CFR 124 or 40 CFR 122.22, as appropriate (or State procedures equivalent to 40 CFR 124) in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Director may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the Director shall follow 40 CFR 124 or applicable State procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending State and/or Federal enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use part 22 of this chapter's procedures for NPDES permit terminations.
7. Availability of Reports; pursuant to CWA section 308
- Except for data determined to be confidential under 40 CFR 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Regional Administrator. As required by the CWA, permit applications, permits, and effluent data shall not be considered confidential.
8. Removed Substances; pursuant to CWA section 301
- Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials entering waters of the U.S.
9. Severability; pursuant to CWA section 512
- The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and remainder of this permit, shall not be affected thereby.
10. Civil and Criminal Liability; pursuant to CWA section 309
- Except as provided in permit conditions on "Bypass" and "Upset", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.
11. Oil and Hazardous Substances Liability; pursuant to CWA section 311

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA.

12. State, Tribe, or Territory Law; pursuant to CWA section 510

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any applicable State, Tribe, or Territory law or regulation under authorities preserved by CWA section 510.

**ATTACHMENT B: Location Map**



